

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

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Preservation Burlington, Karyn Norwood,)
and Liisa Reimann,)
Plaintiffs,)

v.)

Civ. No. 2:23-CV-39

Cathedral of the Immaculate Conception)
Parish Charitable Trust and City of)
Burlington,)

Defendants.)

COMPLAINT

Nature of Action

1. This is a civil rights action under 42 U.S.C. §1983 to prevent the deprivation of Plaintiffs' rights under the Establishment Clause of the First Amendment. On January 17, 2023, Defendant City of Burlington issued a zoning permit to the Defendant Cathedral of the Immaculate Conception Parish Charitable Trust ("Trust") for the demolition of the former Catholic cathedral at 20 Pine Street. The former cathedral and its companion structures and plantings are landmarks of modern architecture and landscape architecture.

2. In issuing the demolition permit, the City did not apply the zoning standards and regulations which govern zoning requests in the City's downtown district. Although the City noted that the demolition request failed to meet such standards, it stated that it was prohibited from applying them by 24 V.S.A. §4413. Section 4413 exempts "churches and other places of worship, convents, and parish houses" from such review.

3. Plaintiffs seek a declaratory judgment that, by exempting religious uses from zoning regulations which apply to secular uses, state law and the City of Burlington impermissibly favor the former over the latter, in violation of the Establishment Clause. Simply put, if the former cathedral were a theater or art

gallery, it could not be torn down without review under the local zoning ordinance. Plaintiffs also seek injunctive relief to prevent the demolition unless and until the City grants a permit after reviewing the demolition request under the zoning regulations which apply to secular uses.

Jurisdiction

3. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 and 42 U.S.C. § 1983, because the case presents a federal question. Venue lies in the District of Vermont under 28 U.S.C. § 1391(b)(1) and (2), because Defendants are located here and the acts complained of occurred here. Declaratory and injunctive relief are available under 28 U.S.C. § 2201 and 42 U.S.C. § 1983.

Parties

4. Plaintiff Preservation Burlington is a Vermont non-profit corporation with a mission to preserve and protect the historic architecture and livability of Burlington through education and advocacy.

5. Plaintiff Karyn Norwood is a Burlington resident who currently serves on the board of directors of Preservation Burlington. Norwood was one of a number of Burlington residents who objected on the record to the Defendant Trust's zoning application to demolish the former cathedral at 20 Pine Street when the matter was heard before the Burlington Development Review Board ("DRB").

6. Plaintiff Liisa Reimann is also a Burlington resident. She also objected on the record to the Defendant Trust's zoning application to demolish the former cathedral when the matter was before the DRB.

7. Defendant Cathedral of the Immaculate Conception Parish Charitable Trust ("Trust") is the owner of the property at 20 Pine Street in Burlington, where the former cathedral is located.

8. Defendant City of Burlington is a municipality which, among other things, reviews zoning applications and issues zoning permits through its Department of Permitting & Inspections and Development Review Board ("DRB"). The Burlington

DRB issued a zoning permit for the demolition of the former cathedral and related structures in a written decision dated January 17, 2023.

Factual Allegations

Structure

9. The former Cathedral of the Immaculate Conception is the premier example of modern architecture in the City of Burlington. The former cathedral and landscaping were completed in 1976, following the destruction by arson of an earlier cathedral built in 1867. The landscaping was designed by the leading landscape architect of post-World War II America, Dan Kiley, who was a Vermont resident, while the cathedral and bell tower were designed by eminent New York architect, Edward Larrabee Barnes.

10. The former cathedral's architecture, featuring circular pews and a central altar, breaks sharply with the nave-and-transept model which has dominated church architecture since the Middle Ages. Reflecting the influence of the Second Vatican Council, the interior lacks side chapels and large stained glass windows, and it contains a minimum of statuary and ornamentation. The building and landscape architecture have been acclaimed by both national publications and noted contemporary architects.

11. The Burlington DRB decision acknowledges that the former cathedral "is a significant property within the city's downtown," noting that it was recommended eligible for listing in the National Register of Historic Places by the City of Burlington in 2012, and determined eligible for the State and National Registers of Historic Places by the Vermont Division for Historic Preservation, the Vermont Agency of Transportation, and the Federal Transit Administration in 2013. It is eligible for listing under Criteria Consideration G of the federal guidelines (36 C.F.R. §60.4(g)), which addresses properties of "exceptional importance" that are less than 50 years old.

Use

12. The former cathedral was used for worship services from 1976 to 2018. The final Mass was celebrated on December 8, 2018, when the structure was

formally decommissioned as a place of worship. Its altar, tabernacle lamp, and a portion of the confessional have since been removed, precluding its use to celebrate Mass. It has been fenced off and vacant for the last four years.

13. Defendant Trust stated to the DRB that it has no planned use in mind for the property following the demolition of the former cathedral and bell tower. On information and belief, however, the property is under contract to be sold to CityPlace Partners once the former cathedral is demolished. On information and belief, CityPlace Partners plans to use the property as a staging area for its adjacent CityPlace project.

Zoning Permit

14. Defendant Trust applied for a zoning permit to demolish the former cathedral on or about October 27, 2022.

15. On December 13, 2022, the Burlington Department of Permitting & Inspections issued a staff memorandum concluding that the zoning request could not be reviewed under Article 14 of the Burlington Comprehensive Development Ordinance (“CDO”), due to 24 V.S.A. §4413. Article 14 of the CDO requires that projects in downtown Burlington comply with the City’s municipal plan, or that the DRB grant “alternative compliance” where conformity is not possible or desirable due to site constraints or other considerations.

16. Following hearings on December 20, 2022, and January 11, 2023, the Burlington DRB issued a written decision on January 17, 2023, granting the demolition permit. Consistent with the Department’s memorandum, the decision stated that the zoning application could not be reviewed under Article 14 of the CDO, because 24 V.S.A. §4413 exempts “churches and other places of worship” from such review.

Legal Contention

17. Under the Establishment Clause of the First Amendment, a “government preference for religion, as opposed to irreligion, is forbidden.” *City of Boerne v. Flores*, 521 U.S. 507, 537 (1997) (Stevens, J., concurring) (invalidating federal statute which prohibited local or state governments from enforcing neutral zoning

laws which “substantially burden” a religious use unless they can show a compelling governmental interest).

18. By exempting religious uses from local zoning requirements which secular property owners must comply with, 24 V.S.A. §4413 gives a preference to religious uses which secular uses are denied, in violation of the Establishment Clause.

Relief

Plaintiffs seek a judgment under 28 U.S.C. § 2201 and 42 U.S.C. § 1983 declaring that, insofar as 24 V.S.A. § 4413 exempts religious institutions from local zoning requirements which secular property owners must comply with, it violates the Establishment Clause of the First Amendment. In addition, Plaintiffs seek an order under 42 U.S.C. § 1983 enjoining Defendant Trust from demolishing the former Cathedral of the Immaculate Conception building and/or landscape unless and until the Burlington DRB issues a demolition permit following a determination that the demolition complies with Article 14 of the Burlington CDO.

Plaintiff also seeks an award of the costs of this action under 42 U.S.C. § 1988.

PLAINTIFFS

Preservation Burlington

By: 

Ron Wanamaker, President

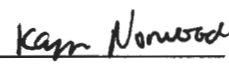
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